

**Brownfields Study Group
September 22, 2000
Room 041, GEF3, Madison
Final Meeting Notes**

Attendees:

John Antaramian
Brian Borofka
Loren Brumberg
J.F. Fleming
Darsi Foss
Nancy Frank
Mark Giesfeldt
Jeff Gohlke
Ken Haberman
Jerry Hall
Art Harrington
Bruce Keyes
Larry Kirch
Dan Kolberg
Dennis Lawton
Lee Madden
Percy Mather
Doug Meinhardt
Jessica Milz
Gene Mitchell
Tom Mueller
Henry Nehls-Lower
Michael Prager
Bob Ramharter
Joe Renville
John Robinson
Dave Schmiedicke
Jason Scott
John Stibal
Joy Stieglitz
Phil Stollenwerk
Gail Sumi
Mark Thimke
Anna Thomas
Valarie Thomas
Sam Tobias
Bill Wheeler
Marc Weinberger

Subgroup chairpersons went through each subgroup issue for discussion. If there were no comments or changes to an issue, it is not included in these meeting notes.

Liability Subgroup Issues:

1. *Expand Liability Exemptions for LGUs*
Hand-out: Draft Legal Opinion from Judy Ohm

Foss: On the solid waste liability, **need to clarify whether the exemption should exclude only licensed sites or if it should also exclude sites that should have been licensed.**

Group: Agree

2. *Expanded Local Government Cause of Action (292.33)*

This issue has been expanded since last meeting.

There was some discussion about whether this should include injunctive relief as well.

Mueller: This was Antaramian's concern.

Stibal: Suggested that we add injunctive relief to the Report.

Keyes: Thimke did have concerns about this issue, we should address private cause of action in general.

Prager: This was discussed by committee. Decided not to put forth the private cause of action issue.

Stibal: WMC could put a dissenting opinion in the Report, but we should include this issue.

Gohlke: A concern we have with this law is the requirement to reduce the cost recovery by the fair market value of the property after cleanup. Clarify that assessment will be made based on remediation costs spent, and not on other improvements (roads, sewer, etc.) on the property.

Harrington: Issue is concern about going after potentially innocent immediate past owner. This is a matter of interpretation.

There was some discussion on how to interpret this section of the law (s. 292.33(4)(b), Stats.) related to the fair market value.

Prager: Does WMC have concerns about the current proposal in the report?

Thimke: Yes, the current law was a compromise that we worked out during the last Brownfields Study Group and I will discuss with WMC, but we opposed this to begin with. WMC will probably not support this if it advances in the Legislature.

Foss: If there are things people would like to have change, submit your opinions/changes in writing.

Group: **Keep proposal in as is**, and people from the study group can submit comments, alternative proposals, or concerns to DNR to be included in the report.

(Later in the meeting) Antaramian: Would like to bring up treble damages issue under cost recovery issue. This would be a bigger motivation for companies to clean up properties. I would like to see the cost recovery act modified to accommodate treble damages. The problem is that big companies, especially international ones, have no incentive to negotiate with city or cleanup a site. Under currently law the companies would be best to just wait and have the city cleanup site, fight it in court, and then worse case is they would just lose and have to pay the cleanup costs 10 years down the road. The current law doesn't help me.

Brumberg: This may be an addendum to this issue.

Antaramian: I feel very strongly about this. My understanding is that we would take this issue up here. I request that we debate this issue here and now. Would like to know opposing concerns.

Keyes: Already incentives for companies facing municipal cost recovery. Cities could abuse the power, and innocent parties faced with extortion settlement. Also, I am concerned that if we try to introduce this, we will not get the rest of the modest current proposal in report passed.

Antaramian: These sites will sit, and city will be in court for many years. If Legislature doesn't like one part, they'll take it out. They won't throw entire proposal out.

Harrington: We should reflect that this concern in the report that is a substantial impediment to redevelopment.

Prager: 2 options - include as proposal, or include as a comment/opinion.

Stibal: I don't think that this is really a deterrent.

Foss: We recognize this is a problem, and we don't know where to put this issue.

Stibal: Definitely need to state the problem, and put possible solutions in as well.

Frank: What about treble damages only if the person caused the contamination?

Antaramian: I agree, if we put in something about proving who is the RP, I'm fine with that.

Group: **Agree to recognize this problem described by Antaramian in the background section of the issue but the proposal for treble damages would not be included in the groups recommendation.** Anyone can submit this additional proposal in their written comments.

3. *Recognizing DNR's Enforcement Discretion*

Prager: Issue paper was expanded since last meeting.

4. *Clarify Liability Issues Related to Sediment*

Prager: Recommendation to clarify off-site exemption statute to add sediment contamination.

Giesfeldt: There is a rejuvenation of the Sediment Advisory Group as of this week.

Foss: Keep this proposal in here. It is not contradictory to Sediment Advisory Group.

Prager: As explained in the proposal, the state fix to the off-site exemption doesn't really address potential federal liability issues.

Group: Group agreed to **expand recommendation to request that the "sediment advisory committee" address these issues in the future.**

Robinson: This issue could impact other surface waters, not just rivers, if there is low/high water levels changes that leave contamination on a property.

5. *Clarify Assignability of COC for VPLE*

Prager: This is written a little more clearly than at last meeting.

6. *Clarify Waste Regulatory Issues*

Prager: Basically same proposal as last time, with a little more clarification in the proposals.

Borofka: It's still a concern that the issues with DNR keep moving along.

Giesfeldt: Gene Mitchell from DNR can talk about solid waste issues later this afternoon. The hazard waste issue – things are moving well and we will have meeting with EPA on this next week.

7. *VPLE - Clarifying Access in the Use of Natural Attenuation*

Prager: Brand new issues since last time. We are working on this related to using natural attenuation at VPLE sites.

Local Government Subgroup Issues:

1. *ER TIF*

Weinberger: Will get DNR a different appendix next week with a narrative description of technical changes.

2. *Negotiated Sale in Lieu of Bidding*

Weinberger: 560.13 is referenced, which is a Commerce statute. A DNR statute should be referenced instead in order to keep the report consistent. **The reference will be changed to s. 292.75(1)(a) Wis. Stats, which states an eligible site or facility is defined as “an abandoned, idle or underused industrial or commercial facility or site, the expansion of which is adversely affected by actual or perceived environmental contamination.**

Bruce Keyes stated that both Commerce’s and DNR’s definitions causes some confusion as to whether lead and asbestos are considered environmental contamination. Adding the words “release of” before environmental contamination would help to clarify.

Robinson: Agree, but I think this is a new issue. Perhaps the attorneys and DOR/Commerce can discuss..

Foss: The Brownfields Policy MOU group should discuss the definition further.

3. *Blight Elimination*

Stieglitz: The Subgroup met several times and proposed the language that was distributed to the group September 1. Pat Stevens proposed new language last week, changing the proposal to add environmental pollution to the list of blight factors to the term environmental contamination. Should there be changes in the text, or add WMC letter as comments?

Thimke: Purpose was to get away from term “environmental pollution.” A new term would not have any baggage. “Environmental contamination” would work, but any new term would be fine. The new language also ties the term into the current standards for industrial use. We also clarified the inspection authority.

Antaramian: By narrowing focus it makes it harder for municipalities.

Harrington: It’s a sort of chicken and egg proposal, as it makes it so you must have knowledge of contamination before inspection authority is triggered.

Thimke: If you want to clarify inspection authority, you should just start fresh. With the proposed language from the subgroup, how do you know that a property adversely impacts a community? The issue is closely tied to cause of action.

Thimke: Retitle proposal to say “Clarify Blight Elimination and Slum Clearance Authority and Municipal Cause of Action.”

Group Decision: Keep proposal as is and add WMC proposal as comments, with clarification from Pat Stevens.

4. *DOR Assessment Valuation*

Antaramian: Just to be on record, I strongly disagree with the direction this proposal is going. I think this is going to mothball properties.

Stibal: Perhaps we need to have a proposal to create a brownfields tax rate.

Thimke: Changing real estate valuation shouldn’t be the way to change public policy.

Keyes: This proposal isn’t changing anything, just clarifying language.

5. *Clarify LGU Issues in ROW Contamination*

Foss: DNR will get comments together on this issue. Proposals mention MOU, but we need to clarify that that MOU was entered prior to having the off-site exemption language in the statute. When 292.13 came into place, it took the place of this MOU. We will generate our formal response. We need to discuss what in 292.13 doesn't work for LGU's and ROW's. Is this proposal in addition to 292.13, or in place of? It isn't clear from what is written.

Gohlke: We don't own the ROW, but we have to prove that we didn't cause the contamination. Very difficult for 20 square miles of ROW property.

Prager: The Legislative Reference Bureau wouldn't know what to do with this proposal, because the MOU language isn't included.

Thimke: Isn't enforcement discretion another way to handle this? The MOU could be used as a guidance on how the Department should handle this issue.

Keyes: Is this issue premature? Need to amend proposal or defer this issue to a later Study Group.

Group: Keep issue, but change proposal to say that it is being worked on administratively. The MOU will be clarified and guidance written by the DNR.

6. *Letters to Kettl Commission*

Letter will be mailed to the Kettl Commission.

Robinson: **Take "Governor's TIF working group" out of title, since we will not be sending them a letter.**

Weinberger: TIF working group update: They are making efforts to discourage greenfield TIFs and to prevent annexation TIFs. Limited industrial TIFs to 15 years. Limit retail property value within an industrial TIF to 35% of square footage.

7. *Modify Act 88*

Robinson: This issue was added at the last LGU subcommittee meeting. Act 88 could limit some brownfields efforts, as it will limit the information available. If proposal is not able to be done administratively, do it statutorily. Also, need to **add well logs into the proposal.**

Brumberg: Have we sought a legal opinion?

Renville: DNR staff are currently trying to work with this legislation and how it will be implemented. .

Giesfeldt: We think we can work within context of Act 88. However, there are some people out there who are unhappy with "BRRTS on the Web" being available to the public, and that there needs to be further restrictions on the database.

Thimke: While accuracy and timeliness are important issues, this is another tool to add information to what's already there.

Prager: "BRRTS on the Web" is up and running. I encourage you to take a look at it.

Site Assessment Grant Update: (Percy Mather and Valarie Thomas)

82 municipalities applied for the SAG.

Governor announced this week that 41 applicants have been awarded.

Valarie has mailed out award and 90 day letters.

November 1 is due date for large grant (between \$30,000 and \$100,000) applications.

Helpful Hints are now going to be posted on web, and mailed to those who we know are submitting applications.

Taking permanent rule to Natural Resource Board in November.

Valarie handed out a SAG Stats paper. If you would like a copy, please contact Anna Thomas (608-264-6007)

Grants in hand less than a year after statutory authority.

Financial Incentives Subgroup Issues:

1. Land Recycling Loan

Schmiedicke: When would the \$20 million be replenished?

Antaramian: In the next biennium. Because this program wasn't originally geared towards brownfields, the amount that is left wouldn't be as beneficial to brownfields.

Schmiedicke: Put in a more clear proposal for the amount.

Antaramian: Whatever is expended by the end of the state fiscal year is to be replenished. Goal was to see if the program would work better for brownfields.

Schmiedicke: Make this date certain. Make it end of the calendar year, December 31, 2000.

Group: **Change 5th bullet to be replenishable to \$20 million at the end of every even numbered calendar year..**

2. Brownfields Grant Program

Stieglitz: **Put the quarterly app deadline proposal here too.**

Group: Agree

3. Non-economic Projects

Memo from Jason Scott was handed out.

Scott: Greenspace funding is not what we're looking to do. Job creation is something we look at, but is only on component.

Tobias: What are dollar amounts for grants at Commerce versus DNR?

Scott: \$12.2 million at Commerce.

Foss: \$1.45 to DNR SAG.

Tobias: How many of the Round 3 projects were non-economic?

Foss: Need to define what we mean by "non-economic." That could include jobs and taxes.

Scott: Currently have \$400,000 for non-jobs.

Tobias: How many fit the public library type of scenario?

Scott: A lot of these residential projects fit this.

Tobias: Only a very limited amount of Commerce funds can go to greenspace projects.

Stibal: What you want is additional money for parks and open spaces program.

Foss: This group has anticipated the next vision of brownfields. A lot of communities have greenspace projects that don't fit into any state programs. A lot of the smaller SAG sites aren't going to be perfect for Commerce program either.

Money is needed to address these types of projects.

Tobias: Maybe need to reallocate some money.

Frank: The stewardship program isn't right because it is just for acquisition.

Harrington: It's just a matter of time before people litigate when Commerce funds are used for these type of projects. Money doesn't belong at Commerce.

Scott: Greenspace projects are not funded by Commerce, but other non-jobs projects are.

Frank: Either increase SAG or create a new program. It's not Commerce's vision to do non-economic projects.

Stibal: We don't want park and open space program in Commerce. Do we want it in DNR? Where do we put the money?

Foss: We want to recognize this as an issue.

Stieglitz: I also think these projects don't have a place now. It's not Commerce, it's not Stewardship, it's not SAG. We have to be careful how we word this, but I do think there should be a new program in DNR.

Keyes: For this issue we need to rework this background, but take out the proposals.

Mueller: All of our existing programs are oversubscribed. But we have to be careful about wanting new money. There isn't a lot of new money in the next budget.

Wheeler: What about a pilot program with a small pot of money.

Tobias: Keep issue, but scratch proposal about Commerce.

Antaramian: Have to be careful here. Most brownfields are in older neighborhoods. Need to start small and prove that you need more money.

Scott: We don't want this to be a competing program. Avoid duplication of programs.

Prager: Make it only for cleanup money, not for redevelopment.

Keyes: Commerce, could you include points for public use component in the future? Articulate public use so they include this.

Foss: DNR should sit down with Commerce in the next couple days. We will send this issue out electronically to the group after we talk.

Scott: Really talking about minimal or no economic impact. Change language in title.

Group: **Keep issue in the report. DNR and Commerce will talk about this issue and try to rewrite the proposal.**

4. *Gaming Revenues*

Antaramian: Need to do this with other tribes.

Stibal: Want to do this state-wide, but it is only a model.

Keyes: Potawatomi did it because they are in a unique area.

Gohlke: **Clarify second bullet "grants to the city to be administered by" just like in the background.**

Group: Agree.

Schmiedicke: The title should be renamed because it's not for brownfields state-wide. These dollars are fully allocated. Need to be more specific in "Resources" to explain that this would take away funding from other programs.

Group: **Change title to more accurately address "Milwaukee Brownfields."** Jeff Gohlke will make recommendation. Dissenting opinions can be added.

5. *SAG*

Stieglitz: I feel that the grants weren't distributed to many communities. A few communities got more of the money.

Keyes: We need to do some data gathering before we change anything.

Brumberg: Some of the problem was with the bonus points and with the match/points given for money spent on the project.

Mueller: Wait until after subsequent rounds, it was a short time to get a proposal in.

Tobias: I agree, some small towns probably didn't have the time.

Group: No changes.

6. *Tax Credits*

Weinberger: DOR will oppose this.

Wheeler: Will also be issuing comments. Delete second bullet point. Also problems with 3rd bullet point, it wouldn't be effective because of so many LLCs. It's ambiguous.

Group: **Delete second bullet point.**

Mueller: The question is, are these usable?

Wheeler: One EDZ has been set up, but are looking at 15-20 projects around the state.

Group: **In 3rd bullet add "clarify" to the sentence.**

7. *Additional BF Initiatives*

Tobias: Get rid of Stewardship proposal.

Giesfeldt: If the problem is with appraisals, met with CFA yesterday. Don't have resolution, but have dialogue.

Harrington: But Stewardship is matching funds.

Group: **Take out the \$1 million amount.**

8. *Environmental Insurance*

Harrington: The report should say "clarify" and not "add" because for some programs (i.e., TIF) it is already an eligible activity.

Group: Agree. Also, it should say "Pollution legal liability," not "pollution lender liability".

Solid Waste Streamlining

3 hand outs from Gene Mitchell will be mailed out to everyone who attended the meeting and all the Brownfields Study Group members.

"Certifications" draft handout:

Error on version distributed at the meeting. In the second certification, the sentence just before underline that talks about deed record (I have completed and attached...) should be deleted.

If you have comments about underlined sentence, call Gene Mitchell.

Example Letter and "Conditional Grant of Exemption" handout:

Bold #8 on page 4 is an additional condition.

Thimke: Concerned about creating additional pieces of paper people have to look for.

Why not put it on web voluntarily as an alternative.

Mitchell: A concern with that is always accessibility.

"Guidelines for Development of Property Where Waste Has Been Disposed " Draft Fact Sheet:

The copy distributed at the meeting is incorrect, a correct version (with all 5 pages) will be sent out to everyone. Give feedback to Gene.

Harrington: How does this fit in to the expedited exemption process?

Mitchell: Missing a key piece – a succinct and clear process explanation on when a person would use the expedited process. Will be coming soon. This fact sheet is just an informational piece. Are also working on investigation guidance.

Harrington: Doesn't address "what is solid waste."

Thimke: It's a lot of paper for a little foundry sand.

Mitchell: Real mechanism is hiring a firm to do the work. This is to educate environmental firms too.

Thimke: The "Conditional Grant of Exemption" document looks too legal and serious and could scare people, should use a letter format like for the approvals in NR 700.

Harrington: How about a general permit instead of a separate document each time.

Prager: They would get these papers after they apply for the exemption.

Mitchell: This is a measure we have until the rule is set up. The rule will take the "Conditional Grant of Exemption" paper and eliminates it.

Thimke: What is the timing on the rule?

Mitchell: Hope to get rest of pieces together and draft rules early in 2001. Don't expect to see extensive rules, rather extension to existing rules.

Brownfields Study Group Wrap Up:

Canceled October 5 meeting.

Group will try consensus over email.